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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 RICHARD R. SCOTT,
12 Plaintiff,
13 v.
14 DEPARTMENT OF CORRECTIONS, *et al.*,
15 Defendant.

16 Case No. C06-5614FDB

17 REPORT AND
18 RECOMMENDATION TO
19 DISMISS COMPLAINT
20 WITHOUT PREJUDICE

21 Noted for November 24, 2006

22 This case has been referred to Magistrate Judge J. Kelley Arnold pursuant to 28 U.S.C. §
23 636(b)(1)(B). This matter comes before the court upon plaintiff's plaintiff's request to withdraw his
24 complaint (Doc. 6). After reviewing plaintiff's motion, the undersigned recommends that the court
25 GRANT the motion and dismiss this matter without prejudice pursuant to Rule 41(a).

26 Under Rule 41, a plaintiff has the right to voluntarily dismiss his case when no answer or motion for
27 summary judgment has been filed by an adverse party. Rule 41(a)(1) specifically provides that dismissal as a
28 matter of right can be foreclosed only by the filing of an answer or a motion for summary judgment. Roddy v.
Dendy, 141 F.R.D. 261, 262 (S.D. Mississippi, 1992).

29 Mr. Scott is requesting dismissal because he states he is choosing to pursuing the issues and claims in
30 another case, *Scott v. Nerio*. At this time, the court has not reviewed Plaintiff's application to proceed in forma
31 pauperis nor has it considered the issue of service of the underlying complaint. Other than Mr. Scott, no other
32 party has appeared in the above captioned case. Accordingly, plaintiff's request to withdraw the complaint
33 should be GRANTED, and this matter should be dismissed without prejudice.

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties shall have ten (10) days from service of this Report to file written objections. *See also* Fed.R.Civ.P. 6. Failure to file objections will result in a waiver of those objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the clerk is directed to set the matter for consideration on **November 24, 2006**, as noted in the caption.

DATED this Thursday, November 2, 2006.

/s/ J. Kelley Arnold
J. Kelley Arnold
United States Magistrate Judge